

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Yael R.,
 Claimant,
and

FRANK D. LANTERMAN REGIONAL
CENTER,
 Service Agency.

OAH Case No. L 2007040244

DECISION

This matter came on regularly for hearing before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, on May 31, 2007, in Los Angeles, California. Claimant Yael R. was represented by her mother, Yocheved R.¹ Marc Baca, Appeals and Complaints Coordinator, represented the Frank D. Lanterman Regional Center (Service Agency). Oral and documentary evidence was received at the hearing and the matter was submitted for decision on May 31, 2007.

ISSUE

Should the Service Agency provide funds for an out-of-state summer camp for Claimant?

FACTUAL FINDINGS

1. Claimant is a 16 year-old Service Agency consumer eligible for services due to autistic disorder and mild mental retardation. She also takes medication to address inattention, impulsivity and hyperactivity. She lives at home with her mother, father and younger brother. She also has older siblings—a brother and two sisters.

2. Claimant attends school at Bais Yaakoy, a private all-girl high school. This is, in part, due to Claimant's inappropriately sexualized behavior when placed with a mixed gender group. Another reason for this placement is that Claimant and her family practice the Orthodox

¹ The initial is used instead of the last name for purposes of privacy and confidentiality.

form of Judaism, which also recognizes a separation of genders during certain activities. Claimant's school placement addresses her particular religious and cultural preferences. In the past, the Los Angeles Unified School District (LAUSD) offered school placement and special education services to Claimant. However, due to a dangerous experience on the first day of these services several years ago, when Claimant was able to wander from the campus with no apparent appreciation of that fact by LAUSD personnel, her parents have declined most LAUSD services. Because Claimant does not attend a LAUSD campus, she has been told that she cannot access LAUSD services during the extended school year (that is, portions of the summer recess). LAUSD supplies some speech therapy services to Claimant. Claimant's parents also pay for tutoring and additional speech therapy.

3. The Service Agency provides funding for a one-to-one aide on a year-round basis, four hours per day, five days per week. The aide assists Claimant during and after school. Claimant's parents also pay the aide for additional hours, and pay a differential between the rate paid by the Service Agency and the "going rate" for a one-to-one aide. (Exhibit C6.) The Service Agency has approved funds for respite in the amount of 24 hours per month, however the family has not yet availed itself of respite services. The family is trying to arrange for appropriate respite providers and funding. The Service Agency has provided assistance for Claimant to obtain funds through a county program entitled In Home Support Services (IHSS). Now obtained, those funds are used by Claimant's family to pay, among other things, for additional speech therapy services and to augment the pay for Claimant's aide. The Service Agency also provides funds for music therapy as a social skills service, consisting of one 45-minute session per week in a one-on-one setting.

4. In January 2007, Claimant's mother contacted the service coordinator at the Service Agency and reported that she had been told that the Service Agency would not provide funding for Claimant to attend a camp outside of California. As a new service coordinator had recently been assigned, a meeting was arranged to discuss services, needs and particular issues. At a meeting on January 25, 2007, Claimant's mother requested that the Service Agency fund tuition of \$3,500 for Claimant to attend an out-of-state camp for eight weeks in the summer of 2007. The Service Agency replied that it could not fund for an out-of-state camp but could look for in-state camps and possible scholarship providers.

5. On March 22, 2007, the Service Agency's Regional Manager, William Crosson, wrote a letter (Exhibits SA1 and C1)² indicating that the request for funding for an out-of-state camp was denied for several reasons. First, no camp had been included in Claimant's Individual Program Plan (IPP), and services could not be provided unless included in the IPP. Second, the Service Agency was not authorized to make decisions concerning services outside of the state; rather, the state Department of Developmental Services (DDS) may make that

² Service Agency exhibits are designated, e.g., SA1, SA2, and Claimant's exhibits are designated, e.g., C1, C2, etc.

decision, and only after the Service Agency advises DDS that no appropriate services can be found in the state.

6. On March 29, 2007, Claimant's mother submitted a Request for Fair Hearing, indicating that there were no appropriate camps for Claimant in California and that complete or partial funding should be supplied for out-of-state camp. (Exhibits SA2 and C1.) This hearing was the result of the Request for Fair Hearing.

7. An informal meeting occurred on April 11, 2007, with a letter following from the Service Agency, dated April 29, 2007. (Exhibits SA3 and C1.) This letter adds that, during the informal meeting, Claimant's parents asserted that Claimant has attended the out-of-state camp previously, that the camp observes the family's specific cultural/religious values, that Claimant's attendance would give her parents a break from the intense and unusual level of supervisory care needed to keep Claimant safe, and that Claimant would benefit from gaining socialization skills through inclusion with her female peers. The letter repeats the reasons that the Service Agency is denying the request as set forth in the prior letter, Factual Finding 5.

8. Claimant's IPP was updated after a meeting on May 16, 2007. (Exhibit SA4.) The IPP makes no specific reference to summer camp. It does include relevant information in the section on "Social/Recreation," indicating that Claimant wants to socialize and interact appropriately with peers and wants to participate in recreational activities. The music therapy is designed to address social skills, including not interrupting, following directions and learning socially acceptable behaviors. Although the IPP notes that social skills have improved and Claimant is happy with the music therapist, it also notes that Claimant has "a lot more to learn in order to socialize and interact appropriate [sic] with others." The IPP notes that the Service Agency will continue to fund music therapy, the family will continue to work on improving appropriate social behaviors, and the family will continue to fund for Claimant's social and recreational activities.

9. Claimant does not utilize the aide or music therapy services during the summer, although they are available. For many years, Claimant attended a day camp in California that was funded by the Service Agency. The day camp was for regularly-developing children although Claimant was one of three campers with disabilities. According to Claimant's mother, when Claimant outgrew the day camp, the family started sending her to Camp Bnos in Liberty, New York. Claimant has attended Camp Bnos for the last three or four summers. Claimant's parents have paid for all associated costs, including travel, insurance and tuition. Camp Bnos has typically-developing teenagers and a special bunk for children with disabilities. Camp Bnos follows the tenets of the Orthodox form of Judaism. Claimant will also attend this summer. Claimant would like the Service Agency to pay the tuition. The summer session lasts eight weeks, with a tuition cost for 2007 of \$3,900. Claimant apparently has a scholarship that accounts for \$300 of this cost. (Exhibit C5.)

10. The Service Agency contacted different resources to determine if any in-state camp programs could be recommended for Claimant. One program identified was the Tikvah program for disabled children at Camp Ramah in Ojai, California. (Exhibits SA11 and C3.) Claimant contends that this program is not appropriate for several reasons. One is that the religious orientation is of the Conservative form of Judaism, not Orthodox. Another is that the genders mingle for some or all activities, which would be inappropriate for Claimant due to both her cultural and religious preferences as well as her sexualized behaviors with male peers. Claimant submitted additional information about the incompatibility of sending a child of the Orthodox orientation to a camp of the Conservative orientation. (Exhibit C4.)

Another camp program identified by the Service Agency is Gan Israel in Running Springs, California. It has two 2-week sessions for girls each summer. There is no special program for campers with disabilities. The Service Agency contacted the director, who appeared willing to discuss inclusion of a camper like Claimant (Claimant's name and details about her were not given to the director to protect her privacy), assuming that the Service Agency assisted with support services to enable Claimant to participate in camp activities. The Service Agency would consider supplying an aide for such assistance.

Claimant's mother has been acquainted with the Gan Israel camp director and his wife for many years and is aware of certain additional factors of interest. For example, she stated that the camp is generally attended by followers of the Habad Lebovitch branch of Hasidic Orthodox movement and the children generally know each other and go to school together. There is no special program for children with disabilities, and she is concerned that, if Claimant attends with an aide, she will be demonstrably different from the other children and may be ostracized by them or have other obstacles to being fully included in camp activities.

11. Claimant looks forward to attending Camp Bnos. Claimant sees old friends and makes new friends, and engages in activities that are specific to the camp such as outings. Claimant feels more independent when she is at camp, and likes the time away from her family. Claimant's mother contends that there is no camp program in California which is the equivalent of Camp Bnos.

12. Claimant submitted several letters in support of her request. Some letters from the time period 2000-2002 (Exhibit C2) relate to her earlier request to attend an all-girls educational program. One letter dated May 28, 2007 (Exhibit C5), from the Director of Camp Bnos' special campers program, specifically notes that she has observed that Claimant has improved many aspects of her socialization skills while at camp. The camp staff includes many with special training and interest in children with disabilities. The campers in the special program are mainstreamed for many activities with regularly-developing campers.

//

13. The service Agency has written guidelines setting out its policies for funding of services. The guideline on social-recreation activities (Exhibit SA7) includes the following relevant items:

a. The Service Agency will assist consumers with participating in programs in which they can interact and socialize with typical peers, called the “inclusion mandate.”

b. The Service Agency does not typically fund social or recreational activities as ways to provide respite.

c. Families are expected to provide their children with disabilities with the same recreational and social opportunities as they would for a child without disabilities, including assuming the cost. However, if a child with disabilities needs extra support to engage in such activities, the Service Agency may supply that support, including training or a companion for the child.

14. Claimant’s mother testified that she did not request the camp during the most recent IPP meeting because she had already been told by her service coordinator that the Service Agency would not fund an out-of-state camp. However, she renewed her efforts to obtain Service Agency funding when she learned that two of Claimant’s classmates and campmates were attending Camp Bnos with financial assistance from other regional centers.

Claimant’s mother also testified that Claimant has made some progress in music therapy, and acknowledged that a stated goal is to increase socialization skills. However, she contends that the one-to-one set up with just Claimant and the music therapist does not provide direct benefit in assisting Claimant to socialize with her peers. Further, she feels that Claimant’s social skills are more directly addressed in the camp setting, and that Claimant has improved socially in the camp setting.

LEGAL CONCLUSIONS AND DISCUSSION

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code³ section 4500 *et seq.*, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

2. The Lanterman Act gives regional centers, such as the Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620

³ All further references are to the Welfare and Institutions Code.

et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Section 4512, subdivision (b) defines “services and supports for persons with developmental disabilities” as follows:

“specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . .”

Services and supports can include recreation, camping, social skills training and respite. (§ 4512, subd. (b).)

4. The Lanterman Act places a heavy emphasis on the process of developing a consumer’s IPP as the primary mechanism to consider the consumer’s strengths and weaknesses, and identifying the appropriate resources to address a consumer’s needs. (See, for example, §§ 4512, subd. (b); 4646; 4646.5; 4647; and 4648.)

5. The process created by these sections and others can be summarized and explained in less technical terms than the statutory language.

An IPP is developed through a collaborative effort involving the appropriate regional center and the consumer and/or the consumer’s representative(s), and others, collectively referred to as the interdisciplinary team (or ID Team). It was the intent of the Legislature that persons with diverse skills and expertise were to serve on the ID Team. They were intended to confer, deliberate, and decide what should be included in the consumer’s IPP. The ID Team may not abdicate its role nor may it ignore its duty owed not only to the consumer but also to the IPP process.

The IPP is prepared for the consumer by identifying necessary services and supports. The service agency must allow the consumer and her parents to participate in developing the IPP. The plan must be based on information and assessments relating to the consumer’s life goals, her capabilities and strengths, her preferences, any barriers to meeting her goals, her concerns, and other relevant data.

Assessments must be conducted by qualified individuals and performed in natural environments whenever possible. Information must be obtained from the consumer, the consumer's parents and other family members, friends, advocates, any providers of services and supports, and any other interested agencies. The assessment process must reflect an awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family. Claimant and her parents have the reciprocal obligation to assist the Service Agency in meeting its mandate.

An IPP must include a statement of the consumer's goals, based on the consumer's needs, preferences, and life choices. An IPP must contain specific, time-limited objectives to implement identified goals. Objectives must be constructed to allow measurement of progress and monitoring of service delivery. Identified goals and objectives should maximize a consumer's opportunity to develop relationships and participate in community life, in housing, work, school, and leisure activities. Identified goals and objectives should increase the consumer's control over his or her life, should assist the consumer in acquiring increasingly positive roles in community life, and should be directed toward developing competency to help accomplish these goals. Proper goals and objectives allow for efficient evaluation of the effectiveness of the plan and the progress made by a consumer.

The regional center is required to prepare a plan identifying the services and supports a consumer needs to meet the goals and objectives identified by the ID Team, and determine whether those services and supports are to be purchased by the regional center, obtained from generic agencies, or provided from other sources. Claimant and her parents have the right to provide the Service Agency with input into the selection of the providers of those services and supports.

These statutes require that the services provided must be effective in meeting IPP goals, that the IPP should reflect the preferences and choices of the consumer, and that the IPP should be cost-effective in its use of public resources.

6. Under the circumstances of the present case, the Service Agency cannot deny the requested service on the basis that it was not included in Claimant's most recent IPP. Claimant's mother has consistently requested the service since January 2007. The failure to include in the IPP from May 2007 the subject of the request for funding of summer camp is entirely within the control of the Service Agency, and not Claimant.

7. Section 4519 sets out statutory limitations on the process of obtaining services for a consumer to take place outside the state of California. Initially, the statute prohibits spending for such services, with an exception when the Director of the Department of Developmental Services (DDS) "has received, reviewed, and approved a plan for out-of-state service in the client's individual program plan developed pursuant to Sections 4646 to 4648, inclusive.

[DDS] shall authorize the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state.”

8. In this matter, the first impediment to obtaining camp funding is the lack of an IPP relating to Claimant’s request to attend an out-of-state camp. The second impediment is that there has been no determination made during the IPP process that Claimant is in need of these services. While the desires of Claimant and her parents that she attend the camp must be considered, it is also necessary for the ID team to consider whether Claimant’s needs are being met by the present set of services provided and, if not, whether the camp is the appropriate service to meet the identified need. Finally, before the Service Agency can seek funding approval from the Director of DDS, it must seek out possible resources within the state that can meet Claimant’s needs.

9. The Service Agency has started the process by identifying other camps, in state, that may qualify. Claimant has established that aspects of Camp Ramah will not meet her cultural and religious needs. However, with respect to Gan Israel, the objections raised by Claimant’s mother relate more to her position that Camp Bnos is a better fit for Claimant, not that Gan Israel will not fit at all. For example, Gan Israel will only accommodate Claimant for four weeks instead of eight. However, it was not established that Claimant’s needs for socialization opportunities cannot be met in this time period. Further, Claimant’s mother raises concerns about Claimant possibly being the only child with disabilities at camp. However, in her several summers at day camp, Claimant was apparently one of only three children with disabilities, and yet she was able to participate and gain benefit. Although the particular movement of Orthodox Judaism from which many of the campers originate may not be the same as Claimant’s, when Claimant was placed in a group of new campers when she first went to Camp Bnos, she apparently was able to adjust and respond such as to make it a valuable experience for her. Further, the Service Agency has offered to consider providing additional support to assist Claimant to take advantage of the opportunity at Gan Israel.

10. Claimant has not established that the opportunities at an in-state camp are not appropriate. Claimant’s mother stated that there is no equivalent to Camp Bnos within the state of California. However, the obligation of the Service Agency under the circumstances of this case is to identify and offer services or supports that meet a consumer’s needs as identified in the IPP. While a consumer’s preferences are to be considered, they are not paramount, particularly where, before an out-of-state service can be provided, it must be determined that “the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state,” as required by section 4519. The record in this case does not establish what, if any, specific needs of Claimant are not being met as established by an assessment by qualified persons, or that such needs cannot be met by an in-state resource.

11. The Service Agency should arrange for an assessment and convene an IPP meeting to consider whether Claimant's present social skills service is sufficient, and whether support services during a summer camp might address any additional recreational and socialization needs. If such needs are identified and if the IPP team determines that there are other factors that make the in-state services inappropriate to meet Claimant's needs, the Service Agency should prepare a plan for out-of-state services to be forwarded to the Director of DDS for consideration under Section 4519.

ORDER

Claimant's appeal of the Service Agency's denial of funding for an out-of-state camp is granted in part and denied in part. The Service Agency shall arrange for an assessment and convene an IPP meeting to consider whether Claimant's present social skills service is sufficient, and whether support services during a summer camp might address any additional recreational and socialization needs. If such needs are identified and if the IPP team determines that there are other factors that make the in-state services inappropriate to meet Claimant's needs, the Service Agency should prepare a plan for out-of-state services to be forwarded to the Director of DDS for consideration under Section 4519.

Dated: June 14, 2007.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days. See Welfare and Institutions Code section 4712.5.